

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**ENEL NORTH AMERICA, INC.**

**Employer**

**and**

**Case 32-RC-259399**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL UNION 1245<sup>1</sup>**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Enel North America, Inc. (“Employer”) is a nationwide provider of electrical power generated from renewable sources. International Brotherhood of Electrical Workers Local Union 1245 (“Petitioner” or “Union”) seeks, by the instant petition, to represent a unit of control room operators, plant technicians, mechanical technicians, and electrical technicians employed at the Employer’s facilities in Fallon, Nevada, and Beaver, Utah. The Employer contends that a unit combining the Nevada and Utah facilities is not appropriate under the Board’s standard for multi-facility bargaining units.

A hearing officer of the National Labor Relations Board (“Board”) held a telephonic hearing in this matter on April 30, 2020.<sup>2</sup> Both parties made an oral argument at the conclusion of the hearing. Based on the record evidence and relevant Board cases, I find that a community of interest exists between the employees in Nevada and those in Utah, and as such the petitioned-for unit is appropriate. Having found the unit appropriate I have directed an election accordingly.

**A. RECORD EVIDENCE**

The Employer operates power plants throughout North America that utilize renewable energy sources to generate electric power. The Nevada site consists of two geothermal plants and three solar plants in the vicinity of Fallon, Nevada, which is approximately 65 miles east of Reno, Nevada. The Employer maintains some office space in Reno. The Fallon, Nevada, geothermal plants are referred to as the Stillwater plant (“Stillwater”) and Salt Wells plant (“Salt Wells”). Salt Wells is located approximately 8 miles from the Stillwater facility. Adjacent to the Stillwater geothermal plant are three solar power plants, simply referred to collectively as the Stillwater solar plants (“solar plants”). The Employer operates a single geothermal plant, the Cove Fort plant (“Cove Fort”) in Beaver, Utah. Beaver is approximately 450 miles from Fallon. The

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<sup>1</sup> The names of the parties appear as amended at hearing.

<sup>2</sup> On May 11, 2020, the Board issued its Decision in *Morrison Management Specialists, Inc. d/b/a Morrison Healthcare*, 369 NLRB No. 76 (2020). By that Decision, the Board held that representation hearings that involve witness testimony should be conducted by videoconference, not telephonically. *Id.*, slip op at 1. At the time of that decision, in this case the telephonic hearing had concluded, but a decision and direction of election had not yet issued. The Region provided the parties an opportunity to reopen the record for purposes of examining witnesses via videoconference, consistent with *Morrison Healthcare*. Both parties waived their right to a videoconference hearing in writing. Accordingly, I have made my determination from the existing record before me.

Stillwater, Salt Wells, and Cove Fort plants are organized into a single administrative grouping by the Employer.

A geothermal plant uses pumps to bring hot water from an underground source to the surface. It then uses this hot water to heat a secondary fluid, and the heated secondary fluid propels a turbine that in turn drives a generator to produce electricity. The plant then returns the water to the ground completing the renewable cycle. An underground reservoir can be “open,” meaning it is relatively easy to return the water to its source, or “tight,” meaning returning the water is more difficult, requiring the use of injection pumps and positive pressure. Salt Wells and Cove Fort both operate off open reservoirs, while Stillwater utilizes a tight reservoir. Solar plants use solar energy to generate electrical power, which is then stored and distributed to the electrical grid by inverters.

A single control room at the Stillwater facility operates the Stillwater, Salt Wells, and Cove Fort plants, as well as the solar plants.

### **1. Skills, Duties, and Working Conditions**

Almost all the 16 employees at issue are employed at Stillwater, the most technologically complex of the geothermal plants, the only location with solar power, and the location where the single control room is located. The control room is staffed by employees classified as control room operators (“operators”), the first of the petitioned-for classifications. Typically, two operators work in the control room at a time to monitor the data received by the control room systems and to verify that operations at the plants are within the appropriate parameters. In addition to the Employer’s six operators, the petitioned-for unit also includes approximately a dozen technicians that work at the facilities, classified as plant (“plant technicians”), maintenance (“maintenance technicians”), and electrical technicians (“electrical technicians,” collectively “technicians”).

Plant technicians are the entry level technician position. Plant technicians perform rounds, taking local readings from equipment to confirm the information relayed to the control room is accurate. Plant technicians will also assist with more complex tasks. These more complex maintenance tasks – preventative maintenance and repairs of the various pumps, turbines, control valves, motors, switches, controllers, and inverters used in the plants – are performed by the maintenance and electrical technicians. The Employer employs two plant technicians, three mechanical technicians, and four electrical technicians at Stillwater, and one of each type of technician at Cove Fort, although the electrical technician position at Cove Fort is currently vacant. No technicians are permanently assigned to Salt Wells, as the close vicinity of Salt Wells and the solar plants to Stillwater allows the Stillwater technicians to maintain Salt Wells.

The technicians at both Stillwater and Cove Fort have the same background and abilities, but the equipment they work does differ in some ways. Stillwater and Salt Wells were designed and built by the same contractor, and are functionally similar, but Cove Fort utilizes a different secondary fluid to drive a lower speed turbine. Although these engineering aspects of the plants are different, the technicians’ duties at each

remain the same: maintaining each plant's pumps, turbines, control valves, motors, switches, controllers and inverters.

Technicians at Stillwater additionally maintain the solar plants. There are no solar plants at Cove Fort.

The control room monitors the plants on a 24-7 basis, with the operators working 12-hour shifts on a five-day on, four-day off schedule. Technicians typically work from 7:00 a.m. to 3:30 p.m., Monday to Friday. The operators and technicians at issue receive the same fringe benefits, including vacation, sick leave, health insurance and retirement benefits and are subject to the same policies and procedures.

## **2. Functional Integration**

As noted above, a single, centralized control room at Stillwater, staffed by operators, controls the generating facilities at issue here. Technicians are based at two locations, Stillwater and Cove Fort, and work at multiple sites, but their assignments originate from a single source, the maintenance planning group. This planning group, consisting of three employees in the technical support division in Reno, develop a weekly maintenance plan to ensure all regular maintenance is occurring on the necessary schedule. This maintenance plan addresses preventative maintenance, but also incorporates unanticipated needs. The maintenance planning group provides the plan to the technicians' first-line supervisor, based at Stillwater, who in turn delivers the plan to the Stillwater and Cove Fort technicians.

Although the operations and maintenance functions are largely interconnected, in some ways the facilities are independent in their operation. Each power generating unit – Stillwater, Salt Wells, Cove Fort and the two solar plants – has their own operating budget, and their power output is sold to separate customers.

## **3. Contact and Interchange**

The control room at Stillwater is physically located in the middle of the geothermal site, in a building that also contains that facility's medium and high voltage switching gear. Surrounding the control room are the pumps and other geothermal equipment. Adjoining the geothermal plant are the solar plants and a small administrative building with a break room and office space. When working, the operators remain in the control room, while the technicians move between the Stillwater geothermal plant, the adjoining solar plants, and Salt Wells. The operators and Stillwater technicians may occasionally have a reason to travel to the Employer's office space in Reno, such as a training.

The two operators in the control room are in constant contact with each other throughout their shift. The technicians start their shift with a brief meeting, and then proceed to perform their actions, some of which they perform independently and some of which require several technicians working together.<sup>3</sup> The operators and Stillwater

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<sup>3</sup> Due to the COVID-19 pandemic, at the time of the hearing some regular procedures have been modified to minimize contact. This includes some Stillwater technicians reporting directly to Salt Wells and stopping the practice of bringing the technicians together for the morning meeting in-person. It does not appear to be in dispute that these are temporary measures and I have addressed the regular procedures in making my findings.

technicians will be in contact with each other at times during the day for work related reasons, such as a technician notifying the control room that a piece of equipment is shutting down for maintenance, and occasionally as a result of working at the same facility, such as using the same break room in the administrative building.

The Cove Fort technicians report to the Cove Fort facility and usually attend the technicians' morning meeting by telephone. At the beginning of the shift a technician will also contact the control room and notify the control room that the technicians are on-site, as well as any other individuals, such as outside contractors, that are at the facility on that day. As with the Stillwater technicians, the Cove Fort technicians will also be in contact with the control room throughout the day to notify the operators of actions they are taking, such as taking a piece of equipment offline for maintenance. A Cove Fort technician estimated that it may be necessary to contact Stillwater three or four times a week for this type of notification. At the end of a shift the Cove Fort technicians will typically contact their first line supervisor at Stillwater and assess the progress of the day in relation to the week's maintenance plan.

Cove Fort technicians will occasionally travel to Reno for Employer functions, such as training or the Employer's holiday party, although one technician must always remain behind to be on-site at Cove Fort. The record indicates this is not a common occurrence, and perhaps occurs once a year. A more common form of contact between the Stillwater and Cove Fort employees is when Stillwater technicians travel to Cove Fort to assist with large projects. The record indicates this occurs, on average, two or three times per year, and the record contains a specific example of a pump at Cove Fort that required replacement in March 2020. That process took three or four days and involved two technicians travelling from Stillwater to Cove Fort and working with the Cove Fort technicians and a subcontractor. Because of the much smaller employee complement, it is rare for Cove Fort technicians to travel to Stillwater to assist with projects. The record indicates this has only occurred once or twice in the last eight years.

As a result of the distance between the facilities, temporary interchange between Stillwater and Cove Fort technicians typically will not occur. Some permanent interchange has taken place; approximately five years ago a technician from Cove Fort transferred to Stillwater.

#### **4. Management and Supervision**

The operators report to the manager, control room operations ("control room manager"), who is in Stillwater, as their first line supervisor. All technicians both at Stillwater and Cove Fort report to a single site manager ("site manager"), located in Stillwater, as there is no supervisor located at Cove Fort. Both the control room manager and the site manager report to the regional manager, geothermal, ("regional manager") whose office is in Reno. The regional manager reports to the senior director for geothermal and solar operations and maintenance ("senior director"), also located in Reno.

The senior director reports to the Employer's North American headquarters, located in Andover, Massachusetts. The Employer maintains a full human resources

department in Andover that provides support for the facilities in question. When a job opening occurs at Stillwater or Cove Fort local management notifies human resources, and human resources posts the position. Human resources will then collect and forward appropriate candidates to the control room manager, for an operator opening, or the site manager if the opening is for a technician. Candidates will be selected, and the first level supervisor and the regional manager will conduct interviews with applicants and make a hiring decision.

Centralized human resources also perform functions such as conducting wage surveys and setting initial wage rates for the operators and technicians in question. Other decisions that impact wages are handled locally, such as approving overtime. The operators' schedule results in overtime on a regular and anticipated basis, but if additional overtime is necessary it is approved by the control room manager. If it is necessary for technicians to work overtime it is approved by their first line supervisor, the site manager.

## **5. Geographic Proximity**

As noted, the solar plants are adjacent to Stillwater. Salt Wells is about 8 miles from Stillwater, but due to limited road access drive time between the facilities may be 30 minutes. Beaver is approximately 450 miles from Fallon and travelling by road between Stillwater and Cove Fort takes approximately seven-and-a-half hours.

## **6. Bargaining History**

There is no evidence of any bargaining history among the employees at issue.

## **B. ANALYSIS**

The appropriateness of a multi-facility unit is determined by whether the employees in question share a community of interest, considering the following factors: (1) similarity in skills, duties, and working conditions; (2) functional integration; (3) employee contact and interchange; (4) centralized control of management and supervision; (5) geographic proximity; and (6) bargaining history. See, e.g., *Exemplar, Inc.*, 363 NLRB No. 157 (2016); *Clarian Health Partners, Inc.*, 344 NLRB 332, 334 (2005); *Bashas', Inc.*, 337 NLRB 710, 711 (2002); *Alamo Rent-A-Car*, 330 NLRB 897, 897 (2002). In the multi-facility unit context, the question is simply whether the petitioned-for unit is an appropriate one; the Board's single-facility presumption does not apply and does not need to be overcome. *Hazard Express, Inc.*, 324 NLRB 989, 989 (1997) (citing *NLRB v. Carson Cable TC*, 795 F.2d 879, 886-87 (9th Cir. 1986); *Capital Coors Co.*, 309 NLRB 322, 325 (1992)).

The Board has repeatedly emphasized that multi-facility units should correspond to employers' administrative groupings. See, e.g., *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 3 (2016). In addition, the Board will find a petitioned-for multifacility unit inappropriate if the petitioned-for group does not share a community of interest distinct from that shared with employees at other, excluded locations. *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1082 (2004); see also *Acme Markets, Inc.*, 328 NLRB 1208 (1999).

Petitioner seeks to represent a unit consisting of the operators and technicians employed at Stillwater and Cove Fort. There is no dispute over the Stillwater operators and technicians sharing a community of interest and being included in a unit, but the Employer objects to including the Cove Fort technicians in a unit with the Stillwater employees. Accordingly, the question before me is whether the Stillwater operators and technicians share a community of interest with the Cove Fort technicians sufficient to make a multi-facility bargaining unit appropriate.

### **1. The Skills, Duties, and Working Conditions Weigh in Favor of the Multi-Facility Unit**

The skills and duties of the petitioned-for employees are very similar within classifications. Of importance here is the lack of a discernable difference between the skills and duties of a technician at Stillwater and a technician at Cove Fort. A plant technician at Stillwater has the same duties as a plant technician at Cove Fort; they are performing rounds, taking readings, and assisting the other technicians. The same is true of the mechanical and electrical technicians and their respective duties. The engineering differences between the plants, such as the different secondary fluids used and differing turbine speeds, do appear to result in technicians developing certain specialized knowledge over time. The record indicates a technician can move between Stillwater and Salt Wells without additional training or orientation, but a technician from Cove Fort would not immediately know how to perform certain tasks at these facilities. However, there is no evidence that these differences lead the Employer to seek a different educational background or skills at the time of hire. Further, the engineering differences do not prevent the Stillwater technicians from assisting the Cove Fort technicians on larger projects.

There is similarly no evidence that the existence of solar plants at Stillwater requires additional skills beyond what technicians at Cove Fort possess. Indeed, the record indicated that one of the rare instances where a Cove Fort technician travelled to Stillwater was when his knowledge of inverters was useful in a project at the solar plant.

Working conditions are also similar. The technicians at Stillwater and Cove Fort have their wages set in the same manner, have the same fringe benefits, and work the same schedules. The record does not indicate any working conditions that significantly differ between Stillwater and Cove Fort.

The evidence of similar skills and duties within classifications and working conditions across classifications strongly supports finding a community of interest exists between the Stillwater and Cove Fort employees.

### **2. Employees are Functionally Integrated**

The Employer's product is electrical power, and the operators and technicians both have a clear role in this production process. The nature of the plants in question is that once operating they do not need significant input, but they do require constant observation to verify safe operation, and constant maintenance to continue operation without breakdowns. The integration between Cove Fort and Stillwater is self-evident in that Cove Fort has no local control room but is instead run from Stillwater. The record also demonstrates that operation of Cove Fort requires the Stillwater technicians, in that

certain necessary maintenance projects cannot be performed by the Cove Fort technicians alone.

The high level of functional integration between the plants weighs in favor of finding a community of interest exists between the Stillwater and Cove Fort employees.

### **3. Employees Experience Frequent Contact and Interchange**

The Stillwater and Cove Fort employees are in telephone contact daily, with the Cove Fort technicians calling the operators in the control room and joining the technicians meeting at the beginning of each shift. In contrast, in person contact is minimal. Balancing this somewhat is that the long-distance results in longer trips. For example, when the Stillwater technicians travelled to Cove Fort for the pump replacement, they were working in conjunction with the Cove Fort technicians for several days.

As expected, given the distance involved, there is no temporary interchange between the Stillwater and Cove Fort technicians, although there is some evidence of permanent interchange. On balance, the evidence regarding contact and interchange is mixed and I find it a neutral factor.

### **4. Management and Supervision is Centralized**

All employees at issue are supervised from Stillwater, as no local supervision is present at Cove Fort. The operators and technicians are supervised separately at the first level, by the control room manager and site manager respectively, but at the second level all are supervised by the regional manager.

Given the lack of separate supervision I find this factor weighs strongly in support of finding a community of interest exists between the Stillwater and Cove Fort employees.

### **5. Geographic Proximity**

The Stillwater and Cove Fort sites are not in close geographic proximity. Indeed, the sites are in separate states and separated by hundreds of miles. The distance involved is greater than the Board has typically addressed in making multi-facility determinations. See *Bashas', Inc.*, 337 at 711 (facilities within a 30-mile area); *Alamo Rent-A-Car*, 330 at 897 (facilities separated by 10 miles). Such a significant distance between employees would typically weigh against finding a community of interest between the petitioned-for employees.

However, I note several factors that I find mitigate the large distances involved here. The first is the extremely remote nature of the facilities in question. Fallon, Nevada, has a population of under 10,000 inhabitants and Beaver, Utah, less than 5,000. Reno is approximately 65 miles west of Fallon, but Beaver is east, separated by 450 miles of remote Nevada and Utah desert. Although travelling by road between the two locations takes almost eight hours, the only community over 1,000 inhabitants on the entire route is Ely, Nevada, itself smaller than Beaver. Salt Lake City, Utah, is 200 miles north of Beaver, and Las Vegas, Nevada is over 200 miles to the southwest. The facilities in question are in one of the remote portions of the United States, and I do not

find an analysis that merely considers mileage as a number, absent this context, adequately reflects the reality of the Stillwater and Cove Fort workplaces.

Second, I find the lack of separate supervision at Cove Fort, described above, suggests that the Employer does not find the distance involved unworkable. The shared supervision of the technicians in Stillwater and Cove Fort is its own factor in support of a community of interest, and I have given that factor its due above. However, the distances involved in that shared supervision are also worth noting. It would be incongruous to find the 450-mile distance effectively prevented finding a community of interest when the Employer finds it is able to supervise employees remotely at this distance.

I do find the lack of geographic proximity weighs against a community of interest, but I find that this is mitigated by the considerations mentioned above.

#### **6. There is No Bargaining History Between the Parties**

There is no evidence of relevant bargaining history between the parties and it is not a consideration in my analysis.

#### **C. CONCLUSION REGARDING COMMUNITY OF INTEREST**

Based on the above, and particularly the strong evidence of similar skills, duties and working conditions, as well as centralized management and supervision, I agree with Petitioner regarding the unit in question. I recognize the significant distance between Stillwater and Cove Fort, and that this limits temporary interchange between the facilities. However, for the reasons stated, I do not find this consideration prevents finding a community of interest exists among employees in the petitioned-for unit. On balance, I find that the evidence supports finding the employees at issue share a community of interest sufficient to make the petitioned-for multi-facility unit appropriate.

#### **D. A MAIL BALLOT ELECTION IS APPROPRIATE**

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* at 1346.

The Board's longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2. However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* This includes a few specific situations addressed by the Board, including where voters are "scattered" over a wide



geographic area, “scattered” in time due to employee schedules, in strike situations, or other extraordinary circumstances. *San Diego Gas*, supra at 1145.

On May 8, 2020, the Board, in an Order denying a request for review in *Atlas Pacific Engineering Company*, Case 27-RC-258742, addressed a mail ballot determination in the context of the COVID-19 pandemic. In its footnote to that Order, the Board noted that *San Diego Gas* contemplated “extraordinary circumstances” beyond the considerations described above, and that circumstances in place at the time—federal, state, and local government directives limiting nonessential travel, requiring the closure of nonessential businesses, and the Regional office conducting the election on mandatory telework – constituted a valid basis for directing a mail ballot election in that case after considering the conditions surrounding a manual election.

Petitioner argues the instant case is appropriate for a mail ballot election due to the ongoing public health concerns regarding the Covid-19 pandemic. The Employer argues that, per the Board’s longstanding policy, the election should be conducted manually because, as an essential provider of electrical power, the Employer has continued on-site operations at Stillwater during the pandemic and can hold an on-site election. In support of the contention that a manual election can be conducted safely, the Employer placed in the record several policies and procedures it has put in place during the Covid-19 pandemic. The Employer has also committed to holding a manual election in a conference room 400 square feet in size, enough to accommodate the logistics of a manual election with social distancing in place.

As an initial point, I note that a mixed mail and manual election may well have been appropriate even under normal circumstances. The Cove Fort location is so remote, and the number of employees at that location so small, that a strong argument can be made for a mail ballot under any circumstances. I find the current situation involving Covid-19 makes that argument even stronger.

Stillwater presents a more complicated question. At least some residents of Churchill County, where Fallon and Stillwater are located, have tested positive for COVID-19, although presently it does not appear widespread. Nevada has ended its stay at home order, effective May 15, 2020, and is in the process of a phased reopening. Although requirements have been eased and reopening has begun, guidelines continue to be in place at the Federal, state, and local level recommending avoiding unnecessary social contact and conducting business remotely when possible. Indeed, the Employer’s own policies in the record limit non-essential travel and require telework where possible.

Ultimately, I am directing a mail ballot election at Stillwater as well as Cove Fort for two reasons. The first is travel. In light of the extraordinary circumstances created by the Covid-19 pandemic I am unwilling to direct an election that would, at a minimum, require a Board agent and party representatives to travel to Fallon. Fallon is remote, and whether it is a Board agent travelling from Oakland, California, or party representatives travelling from their homes, it seems inevitable that significant travel would be involved to reach Fallon. At this point in the pandemic, this seems ill-advised,

as much in the interests of the residents of Churchill County as in those of the individuals travelling.

Second, a manual election requires employees to come together in some capacity, or for the election to come to them. Measures such as a releasing schedule can be put in place to prevent congregation, but the voters still report to the same room. If separate locations are used, the Board agent is still travelling between locations. Here, the Employer has taken measures such as having technicians that normally report to Stillwater report to Salt Wells precisely to avoid congregating. As explained on the record, this is necessary so that if an outbreak were to occur some technicians would be able to keep the plants operating. Considering these measures, it seems self-defeating to have employees coming together, or a Board agent and others travelling between facilities.

For these reasons under the present circumstances I find it prudent to order a mail ballot election.

### **CONCLUSIONS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>4</sup>
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a voting group appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time control room operators, plant technicians, mechanical technicians, and electrical technicians employed at the Stillwater facility in Fallon, Nevada, and Cove Fort facility in Beaver, Utah; excluding all other employees, guards, and supervisors as defined in the Act.

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<sup>4</sup> During the hearing the parties stipulated to the following commerce facts:

Enel North America, Inc., a Delaware Corporation, with offices and places of business located in Nevada and Utah, operates renewable energy plants. During the past twelve months, the Employer has directly purchased and received products, valued more than \$50,000, from suppliers located outside the States of Nevada and Utah.

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL, UNION 1245**.

### **A. Election Details**

I have determined that a mail ballot election will be held. As of the hearing date, Petitioner has waived the ten days it is entitled to have the voter list described below.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit on May 29, 2020, from the National Labor Relations Board, Region 32, 1301 Clay Street, Suite 300-N Oakland, CA 94612-5224. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 32 office by close of business on June 19, 2020. In order to be valid and counted, the returned ballots must be received at the Region 32 office prior to the counting of the ballots. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

All ballots will be commingled and counted at a location to be determined by the Regional Director at 10:00 a.m. on June 23, 2020.<sup>5</sup> The parties will have the opportunity to participate remotely, if necessary, including using Facetime, to observe the count. No person is permitted to record the ballot count.

Any person who has not received a ballot by June 5, 2020, should immediately contact the Region 32 office at (510) 637-3300, or contact Board Agent Nicholas L. Tsiliacos at (510) 671-3046 or [Nicholas.tsiliacos@nlrb.gov](mailto:Nicholas.tsiliacos@nlrb.gov), to request a ballot.

### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the

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<sup>5</sup> If, on the date of the count, the Regional Office is closed, or the staff of the Regional Office is working remotely, the count will be done remotely. If the Regional Director determines this is likely, a reasonable period before the count, the parties will be provided information on how to participate in the count by videoconference.

election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by May 26, 2020. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

The list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the

Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website. To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. A party filing a request for review must also serve it on the other parties and the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Oakland, California this 21st day of May 2020.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney  
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Region 32  
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